80-888

Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. _____

JAMES D. ROWBOTHAM, Petitioner,

v.

AMERICAN AIRLINES,

INC., et al, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES D. ROWBOTHAM

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Petitioner In Pro Per

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. _____

JAMES D. ROWBOTHAM, Petitioner,

v.

AMERICAN AIRLINES,

INC., et al, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The petitioner James D. Rowbotham respectfully prays that writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on September 8, 1980.

QUESTIONS PRESENTED

1. Whether any exception to the doctrine requiring the exhaustion of contractual remedial procedures exists to give the federal courts jurisdiction over petitioner's claims against American Airlines.

2. Whether a question of material fact exists as to whether the American Airlines Pilots System Board of Adjustment or its decision viloated the provisions of 45 USC 153(q).

3. Whether a question of material fact exists as to whether Allied Pilots Association breached its duty of fair representation.

4. Whether federal government employees acting contrary to statutes, agency regulations and/or in violation of an individual's constitutional rights enjoy absolute immunity from suits for damages.

---

1. PARTIES TO THE PROCEEDINGS IN THE NINTH CIRCUIT: Appeal No.78-3048; JAMES D. ROWBOTHAM v. AMERICAN AIRLINES, INC., et al; Albert V. Casey, as President; Gene E. Overbeck, as Vice-President; Charles A. Pasciuto, as Vice-President; Glen Walker, as attorney; Ludwig G. Lederer, individually and as Medical Director; William G. Budington, individually and as Medical Director, ALLIED PILOTS ASSOCIATION, et al, Nicholas J. O'Connell, as President and as consultant; Ralph L. Harkenrider, as Executive Administrator; Charles W. Fisher, as Legal Counsel; Fran C. Fosdick and Jack S. Pond, as representatives of a class, namely, all the Air Line Pilots in the service of American Airlines, Inc., UNITED STATES OF AMERICA, Federal Aviation

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OPINION BELOW

The opinion of the Court of Appeals appears in the Appendix hereto.

JUDGMENT BELOW

The Ninth Circuit enters Judgment at the time of entering opinion, "Judgment was entered in this case as of the file stamp date on the attached decision of the court".

ORDERS BELOW

The orders of the District Court appear in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on September 8, 1980. This petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 USC 1254(1).

STATUTES INVOLVED

45 USC 153(q) is contained in pertinent part in Appendix hereto.

STATEMENT OF THE CASE

The jurisdiction of the district court was invoked under: 28 USC 1331; 28 USC 1332(a); 45 USC 151 et seq; 45USC 153(q); 29 USC 185; 29 USC 411, 412; 29 USC 141 et seq; 28 USC 1343(4); 5 USC 552,552(a); 18 USC 241; and California Civil Code.

On June 7, 1973, the petitioner, a nine year veteran pilot with American Airlines (American), was permanently discharged by American's Corporate Medical Director, who told the petitioner,"you will never fly for American again". American did not furnish the petitioner with the contractually re-

quired prior written notice of dismissal or with the required prior written notice of medical concern, nor had American made any diagnosis of petitioner's physical condition. Contractually, petitioner could not dispute the discharge until after he had received the required written notice of dismissal, nor could he dispute any American medical concern until after he had received the required notice in writing specifying American's medical concern. The following day, June 8, 1973, the Medical Director completed a medical examiner's report affecting the petitioner, which contained no medical diagnosis, but did refer to the petitioner as "removed from flight status permanently".

Petitioner complained to his union, Allied Pilots Association (Allied) about the wrongful discharge and furnished it with expert medical evidence supporting his position. Allied did not advise petitioner to file a grievance of any kind; did not insist upon American abiding by the terms of the Collective Bargaining Agreement (Agree-

ment); nor did it contact petitioner's doctor or obtain a medical examination of its own. After petitioner started complaining to Allied, his pilots license was suspended by the Federal Aviation Administration(FAA). FAA certified records prove, and the responsible FAA doctor testified, that the petitioner's pilots license was suspended because of a surreptitious telephone conversation with American's Corporate Medical Director on July 31, 1973, in which the Medical Director advised the FAA doctor that the petitioner "is permanently grounded and will not fly for American again", and misrepresented portions of petitioner's medical records in the possession of American. The Agreement prohibits American from divulging any information from medical records outside the Company.

By letter, with copies to Allied, petitioner repeatedly demanded the contractually required notices and contractually required exact duplicate copies of all medical examiner's reports affecting him.

American refused, with copies to Allied, which did nothing to enforce the terms of the Agreement. Petitioner submitted to Allied allegations of contract violations alleging that American breached the Agreement by failing and refusing to furnish the required notices and reports and by divulging medical records information to the FAA. Allied did not file petitioner's grievance; but instead, composed a grievance petition alleging only improper reimbursement of accrued sick leave and sick leave pay. No other grievance petition was ever filed on petitioner's behalf. Contractually, Allied has sole power to file grievance petitions. At the joint adjustment board hearing of such grievance, Allied: 1) called no medical witnesses to support petitioner's medical evidence, 2) did not require any witnesses to be sworn, 3) did not require documents read into the record by American's witnesses to be examined or put into the record as exhibits, and 4) did not challenge statements by American's Corporate Medical Director that

American would not furnish petitioner with the required notice of medical concern and that American would never allow petitioner to be medically evaluated by a three doctor panel, as required by the Agreement.

The joint Adjustment Board's decision went outside the grievance petition to make factual assertions (Findings), including, that, as of October 8, 1974, petitioner had belatedly been furnished medical records and that the petitioner knew in conversations with American's doctors why he was put on sick leave. Only one Board member was questioned on the Findings; he, the union member, testified; that the Findings were made on unrecorded post-hearing assertions by American's Medical Director, that he did not know what petitioner knew from conversations with American's doctors, and that reinstatement of petitioner's pilots license would be at petitioner's expense. American's Corporate Medical Director testified that on the advise of American he, the sole custodian of Ameri-

can's medical records, never furnished petitioner with the medical records to which he was entitled. After the Adjustment Board decision was rendered, the petitioner advised Allied that he had not received the medical records to which he was contractually entitled and that American was continuing to refuse to furnish him with the notices and records which he contractually had to have in order to dispute the discharge and any medical opinion by American. Relying on the joint Adjustment Board findings, Allied refused to assist the petitioner.

In the district court, petitioner, in pro per, filed: 1) petition for review of the Adjustment Board decision, 2) breach of contract suit against American, 3) breach of the duty of fair representation suit against Allied, and 4) damage suit against certain FAA employees. Jury trials were demanded in all but the petition for review action. The district court dismissed the breach of contract action against American on the grounds that petitioner's

sole remedy as to any claims against American lay with the contractual remedial procedures; the three other actions received summary judgments in favor of the defendants. Petitioner, in pro per, appealed to the Ninth Circuit from all district court summary judgments and dismissals. The Nintg Circuit affirmed all summary judgments and dismissals.

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW PRECLUDES ALL JUDICIAL REVIEW OF ANY PORTION OF ARBITRATION DECISIONS RENDERED UNDER THE RAILWAY LABOR ACT.

Hundreds of thousands of Railway and Airline employees are affected by the judicial administration of the Railway Labor Act. They rely upon proper overseeing of adjustment board decisions by the courts. Here, the Ninth Circuit misinterpreted 45 USC 153(q) and this Court's decision in SHEEHAN, UNION PACIFIC R. CO. v SHEEHAN, 1978, 439

US 89. In SHEEHAN this Court set out the required allegations in order to grant review, as:

> The dispositive question is whether the party's objections to the Adjustment Board's decision fall within any of the three limited categories of review provided for in the Railway Labor Act. SHEEHAN, supra at 93.

SHEEHAN cannot be read, as the Ninth Circuit did, to mean that adjustment board decision findings are conclusive prior to review, when the required 45 USC 153(q) objections have been made:

> Section 153 First (q) unequivocally states that the"findings and order of the (Adjustment Board) shall be conclusive on the parties" and may be set aside only for the three reasons specified therein, SHEEHAN, supra at 93.

But, dispite the fact that the petition for review here alleged each of the objections contained in 45 USC 153(q), the Ninth Circuit precluded any review by holding:

> Given no breech (of the duty of fair representation), the Sheehan and statutory standards

> are applicable and no judicial review of the Adjustment Board's decision is presently available to Rowbotham.

Here the record shows that the Adjustment Board went outside the grievance petition submission to make assertions of fact (Findings) which have no basis in reason or fact, but which were purposely made to prevent the petitioner from exhausting the contractual remedial procedures and to cover-up American's repudiations of them. Certainly Congress never intended 45 USC 153(q) to be a shield to protect the employer from the natural consequences for its breach of contract. But, such a shield is exactly what the Adjustment Board's decision is here. If American is allowed to hide behind the finality provisions of 45 USC 153 (q), the shield becomes absolute.

The decision below deserves the attention of this Court, because it not only precludes review of this Adjustment Board decision, it deprives all Railway and Airline employees from future review, even if they

make the required objections.

The petition for writ should be granted , because of the need for standarized interpretations of 45 USC 153(q) and for clarification of the implications of SHEEHAN.

2. THE DECISION BELOW CONFLICTS WITH DECISIONS OF OTHER APPELLATE COURTS AS TO EMPLOYEES' RECOURSE TO THE COURTS WHEN AN EMPLOYER REPUDIATES CONTRACTUAL REMEDIAL PROCEDURES.

In Appeal NO. 78-3048, American is a party, charged with breach of contract, in addition to Allied. The petitioner argued, and the record proves, that American repudiated all contractual remedial procedures. The District Court dismissed American on the grounds that the petitioner had not exhausted the contractual remedial procedures. The Ninth Circuit summarily affirmed. Both courts ignored the first exception to the exhaustion doctrine set forth in VACA v. SIPES, 1967, 386 US 171.

In VACA, this Court held that when an

employer's action amounts to repudiation of the contractual remedial procedures, the employee may go to the courts for redress of breach of contract and the employer is estopped from relying upon unexhausted remedial procedures as a defense, VACA supra at 185.

The record shows that the petitioner was wrongfully discharged in 1973 and that he attempted to exhaust the contractual remedial procedures. The discharge was wrongful, because American failed and refused to furnish him with the contractually required prior written notice of dismissal. DAY v UNITED AUTOMOBILE, AERO. & AGR. IMP. WKRS., LOCAL 36 (1972, 6th Cir.) 466 F. 2d. 83,92, held that discharge without notice in accordance with the collective bargaining agreement results in a wrongful discharge and the employer cannot insist on exhaustion of the contractual remedial procedures. The petitioner was unable to request a discharge hearing, because contractually he had to receive written

discharge notice first, Allied had sole power to file grievance petitions, and it ignored the discharge. Ninth Circuit decision's inference that the grievance hearing and Adjustment Board decision concerned discharge/termination and its assuption that "Rowbotham could return to flying if he recovered within five years of the expiration of his paid sick leave" are totally devoid of evidentiary support.

The Ninth Circuit decision leaves the petitioner in the position which this Court in HINES held no employee should be left in--wrongfully discharged, without a fair opportunity to secure an adequate remedy, HINES v ANCHOR MOTOR FREIGHT, INC., 1976, 424 US 554,571. Employer repudiation leaves injured employees defenseless. If the courts refuse to recognize employer repudiation as a valid exception to the exhaustion doctrine, every person working under a working agreement has lost what this Court considered to be an "obvious" exception.

These conflicts justify the grant of

certiorari to review the judgment below.

3. THE DECSION BELOW CONFLICTS WITH DECISIONS OF OTHER APPELLATE COURTS AS TO WHAT KIND OF UNION CONDUCT WILL CONSTITUTE BREACHES OF UNIONS' STATUTORY DUTY OF FAIR REPRESENTATION.

Allied is charged with breach of the duty of fair representation, The Ninth Circuit affirmed summary judgment on the grounds that:

> According to the language of the collective bargaining agreement, Rowbotham could return to flying if he recovered within five years of the expiration of his paid sick leave. Given this provision, it was not arbitrary, discriminatory, or in bad faith for the union not to argue for Rowbotham's reinstatement.

Under Rule 56, Federal Rules of Civil Procedures, Judges cannot decide factual issues or weigh evidence; also, a jury trial was demanded. Holding that "Rowbotham could return to flying if he recovered within five years..." is totally unsupported by the evidence in the record.

Quite to the contrary, American repudiated all reinstatement procedures, and American's Corporate Medical Director and its Director of Pilots Contracts told Allied that the contractual medical evaluation procedures would never be allowed in petitioner's case --Allied did not protest.(Adjustment Board Transcript) We are left with the Ninth Circuit affirming on the grounds that Allied's refusal to "argue" for petitioner's reinstatement was not arbitrary, discriminatory, or in bad faith.

Except for the decision here, ever since this Court's decision in VACA v SIPES, 1967, 386 US 171, no appellate court has ever held that it is not a breach of the duty of fair representation to ignore a meritorious grievance. Here petitioner was discharged and Allied ignored petitioner's complaints about the discharge and his attempts to get its support in grieving the wrongful discharge. GRIFFIN v INTERNATIONAL U., UNITED AUTOMOBILE, A. & A.I.W. (1972,4th Cir.) 469 F. 2d. 181,183, held that "A union must especially

avoid capricious and arbitrary behavior in the handling of a grievance based on discharge--the industrial equivalent of capital punishment" and that "unreasonable"union conduct constitutes a violation of the duty of fair representation. The record here shows that Allied never investigated petitioner's allegations of contract violations, never made a decision that they lacked merit, and never processed his grievance submission. DE ARROYO v SINDICATO DE TRABAJADORES PACKING., AFL-CIO (1970, 1st Cir) 425 F. 2d 281,285, held that union's failure to adequately investigate the merits of a grievance is arbitrary union conduct. See also HINES v ANCHOR MOTOR FREIGHT, 1976, 424 US 554,560n.4. The record shows that Allied never informed petitioner that it had decided not to process his grievance allegations or argue on his behalf. RUZICKA v GENERAL MOTORS CORPORATION (1975, 6th cir) 523 F. 2d. 306,310,316, held that "such negligent handling of the grievance, unrelated as it was to the merits of Ap-

pellant's case, amounts to unfair representation. It is a clear example of arbitrary and perfunctory handling of a grievance." and "action will lie against a union for... such gross mistake or inaction as to imply bad faith". The record shows that Allied never informed petitioner that it would not argue for his reinstatement or its reasons why. DAY, supra 466 F. 2d at 98, held that union official withdrawing member's grievance without notice to him, without union hearing, and without giving the member the reasons why presented a jury question as to breach of duty of fair representation. Contractually Allied had sole power to file grievance petitions. VACA, supra at 186, held that Congress did not intend "to confer upon unions such unlimited discretion to deprive injured employees of all remedies for breach of contract" and that when union prevents exhaustion of the contractual remedial procedures for a wrongfully discharged employee, it would be a "great injustice to leave the employee

remediless".

The record shows that after petitioner's wrongful discharge and contract violations by American, the only grievance petition filed by Allied, on petitioner's behalf, concerned only reimbursement for accrued sick leave and sick leave pay. Allied's jurisdictional statement and "Question at Issue":

> The Board shall consider any dispute properly submitted to it by the President of the Association or by the Vice President-Flight of the Company, when such dispute has not perviously been settled in accordance with the terms provided for in the Pilots' Agreement...1. QUESTION AT ISSUE. Whether the Company violated Sections 8, 14, and all related Sections of the Agreement in failing to properly apply sick leave and pay provisions to J.D. Rowbotham commencing during May 1973 and thereafter.

RUZICKA, supra at 315, held that "capricious or superficial" union conduct equates to "arbitrary and perfunctory" union conduct. Allied's representation of the wrongfully discharged petitioner has left him without a job and without a fair opportunity to secure an adequate remedy, HINES, supra

at 571. held that such a predicament is not acceptable under the concept of fair representation.

The decision below raises significant and recurring problems concerning judicial enforcement of the duty of fair representation, which affect every union member in every industry.

These conflicts justify the grant of certiorari to review the judgment below.

4. THE DECISION BELOW CONFLICTS WITH THIS COURT'S PRINCIPLE THAT FEDERAL EMPLOYEES DO NOT ENJOY BLANKET ABSOLUTE IMMUNITY FROM SUITS FOR DAMAGES.

Parties to Appeal No. 78-3048 include federal goverment employees who are charged with acting contrary to statutes, agency regulations and/or violating petitioner's constitutional rights. The district court granted summary judgment on the grounds that all federal government employees enjoy absolute immunity. The Ninth Circuit summarily affirmed.

BUTZ v ECONOMOU, 1978, 98 S.Ct. 2894, 2905, held:

> Beyond that, however, neither case (BARR, SPALDING) purpored to abolish the liability of federal officers for actions manifestly beyond their line of duty and if they are accountable when they stray beyond the plain limits of their statutory authority, it would be incongrous to hold that they may nevertheless willfully or knowingly violate constitutional rights without fear of liability.

The conflict between this Court and the court below is direct, irreconcilable and affects every citizen and government employee.

This conflict justifies the grant of certiorari to review the judgment below.

Finally, the decision below displays disregard of appellate courts' responsibility to adequately review the record.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Ninth Circuit.

Respectfully submitted,

James D Rowtotham

JAMES D. ROWBOTHAM

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Petitioner In Pro Per

DATED: NOVEMBER 19, 1980

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 8, 1980

JAMES D. ROWBOTHAM, No. 78-3047

Plaintiff-Appellant, No. 78-3048

vs. DC#CV-76-2265 CFP

AMERICAN AIRLINES, INC., et al., MEMORANDUM

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Califronia

Submitted- June 12, 1980

Before: TANG and SKOPIL, Circuit Judges, and KELLEHER,* District Judge.

Rowbotham appeals from the district court's entry of summary judgment against him in these two related actions. In the first action, No. 78-3047, Rowbotham challenges the finding of the American Airlines Pilots System Board of Adjustment (Adjustment Board) that he was properly termin-

ated as a pilot because of his health. In the second action, No. 78-3048, he claims that the Allied Pilots Association (the Union) breached its duty of fair representation.

I.

Adjustment Board Decision

The Supreme Court in Union Pacific Railroad Co. v. Sheehan, 439 U.S. 89 (1978), enunciated the statutory test for judicial review of Adjustment Board Orders. Such review is limited to three specific grounds: (1) failure of the Adjustment Board to comply with the requirements of the Railway Labor Act; (2) failure of the Adjustment Board to conform, or confine, itself to matters within the scope of its jurisdiction, and (3) fraud or corruption. See 45 U.S.C. 153(q).

---

* Honorable Robert J. Kelleher, United District Judge for the District of Northern California, sitting by designation.

Rowbotham asserts that the Adjustment Board decision was "rigged," but he cites no facts supporting this conclusion. He also questions the conclusions of the Adjustment Board by stating that it incorrectly concluded that (1) he was not denied copies of reports to which he was entitled; and (2) he was improperly notified of his dismissal. Under Sheehan, however, these determinations are not subject to judicial review.

Rowbotham attempts to distinguish Sheehan and the limited judicial review afforded by 45 U.S.C. 153(q) by stating that these limitations are not applicable in a case in which the Union has breached its duty of fair representation. It is true that in Glover v. St. Louis-San Francisco R. Co., 393 U.S. 324,328 (1969), the Supreme Court recognized that an employee may bypass the Adjustment Board and bring a wrongful discharge action in district court when his union is guilty of a breach of the duty of fair representation.

See Franklin v. Southern Pacific Transportation Co., 593 F. 2d 899, 901 (9th Cir. 1979). In the instant case, as discussed infr, we find no issue of material fact regarding whether the Union breached this duty. Given no breach, the Sheehan and statutory standards are applicable and no judicial review of the Adjustment Board's decision is presently available to Rowbotham.

II.

DUTY OF FAIR REPRESENTATION

A breach of the statutory duty of fair representation occurs only when a union's conduct toward its member is arbitrary, discriminatory, or in bad faith. Vaca v. Sipes, 386 U.S. 171,190 (1967). An individual employee does not have an absolute right to have his grievance processed to arbitration; and in order to facilitate the settlement of frivolous grievances, a union is given some discretion in its endeavor to end grievances prior to the most costly and time consuming steps. See Vaca v. Sipes,

386 U.S. at 191. A union is accorded great latitude and courts are hestitant to interfere with union decisions regarding the handling of employee grievances unless the union shows a reckless disregard for the rights of the individual employee. Ness v. Safeway Stores, Inc., 598 F. 2d 558 (9th Cir. 1979). A union, however, is subject to complete good faith and honesty of purpose in the exercise of its discretion. Hines v. Anchor Motor Freight, Inc., 424 U.S. 554,565 (1976).

In the instant case, the Union represented a member who had lost consiousness and experienced convulsions on several occasions. According to the language of the collective bargaining agreement, Rowbotham could return to flying if he recovered within five years of the expiration of his paid sick leave. Given this provision, it was not arbitrary, discriminatory, or in bad faith for the Union not to argue for Rowbotham's reinstatement. As to Row-

botham's other grievance requests, the Union represented him throughout the grievance procedure, made telephone calls on his behalf, and processed the life insurance grievance all the way through the Adjustment Board to arbitration. This matter was resolved in Rowbotham's favor.

Although the district court only referred to the Union's obligation of good faith and not to the prohibition against a union's arbitrary or discriminatory action, it is clear from the record as a whole that it applied the correct standard. We find no error in the grant of summary judgment for the Union on this cause of action.

Affirmed.

APPENDIX B

FILED

AUG 10, 1977

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JAMES D. ROWBOTHAM,

Plaintiff,

vs.

AMERICAN AIRLINES, INC., et al., Albert V. Casey, as President; Gene E. Overbeck, as Vice President; Charles A. Pasciuto, as Vice President; Glen Walker, as attorney; Ludwig G. Lederer, individually and as Medical Director; William G. Budington, individually and as Medical Director, Defendants, ALLIED PILOTS ASSOCIATION, et al., Nicholas J. O'Connel, as

NO. C-77-0667-CFP

ORDER GRANTING MOTION OF DEFENDANT ALLIED PILOTS ASSOCIATION FOR SUMMARY JUDGMENT

President and as Conslu-
tant; Ralph L. Harkenrider,
As Executive Administrator;
Charles W. Fisher, as Legal
Counsel; Fran C. Fosdick and
Jack S. Pond, as represent-
atives of a class, namely,
all the Air Line Pilots in
the service of American Air-
lines, Inc., Defendants,
United States Of American,
Federal Aviation Administra-
tion, individually and as its
agent; Department of Trans-
portation, individually and
as its agent, Defendants,
FRANK K. RAYMOND, M.D.,
individually and as an
employee of Federal Aviation
Administration, Defendant,
GEORGE E. BECKERMAN, M.D.,
Defendant, DEWITTE T. LAWSON,
individually and as an em-

ployee of Federal Aviation Administration, Defendant.

This cause came on regularly for hearing on July 29, 1977, on the motion of defendant Allied Pilots Association ("Allied") to dismiss and for summary judgment on the grounds that (1) there is no genuine issue of any material fact in dispute, (2) the record of the Board of Adjustment proceedings as well as all other evidence presently before this Court establishes as a matter of law that Allied did not arbitrarily, discriminatorily or in bad faith represent plaintiff during the course of his grievance proceedings, nor did it arbitrarily, discriminatorily or in bad faith refuse to fund plaintiff's various legal activities, and (3) plaintiff's allegations of slander are time-barred. Plaintiff having appeared in pro-pria persona and defendant Allied having appeared through its counsel, and the Court, having considered all documents filed in support of and in opposition to

said motion, and having reviewed the record of the proceedings before the Pilots System Board of Adjustment filed in the related action of Rowbotham v. American Airlines, Inc., C-76-2265, and finding no genuine issue of material fact in dispute,

IT IS ORDERED that defendant's motion to dismiss and for summary judgment be, and the same hereby is, granted, and that judgment be entered herein in favor of the defendant Allied Pilots Association and against plaintiff with costs to be taxed by the Clerk.

DATED: 10 AUG 1977

CECIL F. POOLE
UNITED STATES DISTRICT
JUDGE

APPENDIX C

FILED

AUG 10, 1977

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JAMES D. ROWBOTHAM, Plaintiff, vs. AMERICAN AIRLINES, INC., et al., Albert V. Casey, as President; Gene E. Overbeck as Vice President; Charles A. Pasciuto, as Vice President; Glen Walker, as attorney; Ludwig G. Lederer, individually and as Medical Director; William G. Budington, individually and as Medical Director, Defends, ALLIED PILOTS ASSOCIATION, et al.; Nicholas J. O'Connell, as President and as Con-

NO. C-77-0667-CFP

ORDER GRANTING MOTION OF DEFENDANTS AMERICAN AIRLINES, INC., DR. LUDWIG G. LEDERER, AND DR. WILLIAM G. BUDINGTON TO DISMISS

sultant; Ralph L. Harkenrider, as Executive Administrator; Charles W. Fisher, as Legal Counsel; Fran C. Fosdick and Jack S. Pond, as representatives of a class, namely, all the Air Line Pilots in the service of American Airlines, Inc., Defendants, UNITED STATES OF AMERICAN, Federal Aviation Administration, individually and as its agent; Department of Transportation, individually and as its agent, Defendants, FRANK K. RAYMOND, M.D.„ individually and as an employee of Federal Aviation Administration, Defendant,

GEORGE E. BECKERMAN, M. D., Defendant, DEWITTE T. LAWSON, individually and as an employee of Federal Aviation Administration, Defendant.

This cause came on regularly for hearing on July 29, 1977, on the motion of defendants American Airlines, Inc. ("American"), Dr. Ludwig G. Lederer and Dr. William G. Budington to dismiss and for summary judgment on the grounds that this Court is without jurisdiction because (1) plaintiff seeks by this lawsuit to retry on the merits alleged breaches of the collective bargaining agreement between American and plaintiff's union, Allied Pilots Association, which have been finally and conclusively resolved by a Pilots System Board of Adjustment established pursuant to the requiements of the Railway Labor Act, 45 U.S.C. 151, et seq.; (2) decisions of such boards are

final and binding and cannot be retried directly or indirectly on their merits, Bernhardt v. American Airlines, Inc., 511 F. 2d 1219 (9th Cir.) ; (3) plaintiff is already pursuing his sole remedy of judicial review of the Pilots System Board of Adjustment decision under 45 U.S.C. 153 (q) in Rowbotham v. American Airline , Inc., C-76-2265. Plaintiff having appeared in propria persona and defendants having appeared through their counsel of record, and the Court having considered all the documents filed in support of and in opposition to said motion and finding itself without jurisdiction to entertain this action, IT IS THEREFORE ORDERED that defendants' motion to dismiss this action be, and the same hereby is, granted, AND IT IS FURTHER ORDERED that a judgment of dismissal be entered for defendants American Airlines, Inc., Dr. Ludwig G. Lederer, and Dr. William G. Budington, and that said defendants be awarded their costs as taxed by the Clerk.

DATED: 10 AUG 1977

CECIL F. POOLE

UNITED STATES DISTRICT JUDGE

APPENDIX D

FILED

MAY 12, 1978

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES D. ROWBOTHAM,	CIVIL NO. C-77-0667-
Plaintiff,	CFP
vs.	ORDER and SUMMARY
AMERICAN AIRLINES,	JUDGMENT
INC., et al., etc.,	
Defendants.	

This action having come regularly on for hearing before the Court on the motion of the Federal defendants to dismiss or in the alternative for summary judgment, and

The respective parties having been afforded an opportunity to be heard, the Court having considered the respective pleadings and the arguments thereon, and the entire matter having been duly submitted after the Court was fully advised thereon,

IT IS HEREBY ORDERED that:

1. The Federal defendants' motion, considered as a motion for summary judgment, is GRANTED;

2. Summary judgment is entered in favor of the Federal defendants and against the plaintiff; and

3. Each party shall bear its own costs.

Dated: May 12, 1978

U.S. DISTRICT JUDGE

APPENDIX E

FILED

DEC 9, 1977

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JAMES D. ROWBOTHAM, No. C-76-2265 CFP

Petitioner, ORDER

vs.

AMERICAN AIRLINES, INC.,

Respondent.

This cause came on for hearing on December 9, 1977 on the motion of petitioner James D. Rowbotham and on the cross-motion of respondent American Airlines, Inc. for summary judgment, and the Court having considered the matter, and good cause appearing therefor,

IT IS HEREBY ORDERED that summary judgment is granted in favor of respondent;

IT IS HEREBY FURTHER ORDERED that petitioner's complaint is dismissed.

DATED: December 9, 1977

UNITED STATES DISTRICT JUDGE

APPENDIX F

45 USC 153(q) reads, in pertinent:

If any employee...is agrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award or by the failure of the division to include certain terms in such award, then such employee...may file in any United States district court...a petition for review of the division's order ...On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order.

CERTIFICATE OF SERVICE

I hereby certify that on the 24 day of NOVEMBER 1980, I served the within PETITION FOR WRIT OF CERTIORARI on the interested parties in said action, by placing three true and correct copies in each of three sealed envelopes, with postage thereon fully prepaid, in the United States mail at Redwood City, California, addressed as follows:
Solicitor General, Department of Justice, Washington, D.C. 20530; BROBECK,PHLEGER & HARRISON, One Market Plaza, San Francisco, CA 94105;P.R.S. Bupara, U.S. Attorney, 450 Golden Gate Ave., San Francisco, CA 94102.

I CERTIFY under penality of perjury that the foregong is true and correct. EXECUTED ON NOVEMBER 24 1980 in Redwood City, California.

James D Rowbotham

JAMES D. ROWBOTHAM